



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seaworks, Inc.
File: B-226631.2
Date: December 22, 1989

DIGEST

Contracting officer's finding of bidder nonresponsibility was properly based upon the unacceptability of individual sureties who are the subjects of an ongoing government investigation in connection with their furnishing of bid guarantees pledging overvalued stock.

DECISION

Seaworks, Inc., protests the rejection of its bid under invitation for bids (IFB) No. N62474-86-B-4671, issued by the Naval Facilities Engineering Command for pier repair at the Naval Weapons Station, Concord, California. The Navy rejected Seaworks' bid because it proposed unacceptable individual sureties.

The IFB required bidders to submit a bid guarantee equal to 20 percent of their bid price. At bid opening on May 9, 1989, the agency received eleven bids. When J.H. Pomeroy and Co.'s low bid expired prior to award, Seaworks became the apparent low bidder. Seaworks' bid bond was guaranteed by two individual sureties, Sam L. Bass and George Bass. Seaworks submitted, along with its bid bond, affidavits of individual surety for each surety and lists of outstanding bond obligations.

Sam Bass' net worth as represented on his SF-28 is \$47,891,909: \$40 million in stock shares of Bass International, Inc., and \$7,891,909 in assets of Bass Stabilizers, Inc. George Bass claims a net worth of \$36,009,880 on his SF-28: \$36 million in Bass international stock and \$9,880 in cash. These individuals' affidavits were certified by an individual who admitted that he had no personal knowledge of either surety's assets.

047393/140307

The Navy states that several recent government investigations have disclosed that neither Sam nor George Bass possessed the requisite financial resources or personal integrity to be acceptable sureties. See, e.g., Labco Constr., Inc., B-232986 et al., Feb. 9, 1989, 89-1 CPD ¶ 135. In this regard, the value of Bass International stock has been found to be misrepresented and grossly overstated, and the existing bond obligations of the two individual sureties now approach the purported value of this pledged Bass International stock. Moreover, these sureties did not honor their obligation on a recently defaulted Navy contract. Finally, these sureties are the subject of an ongoing criminal investigation. Under the circumstances, the contracting officer saw no reason to request additional information and therefore rejected Seaworks as nonresponsible on August 29, 1989.

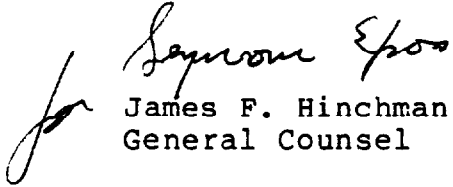
Seaworks disagrees with the agency's conclusions, contending that the submitted information establishes the assets of George and Sam Bass as more than sufficient to satisfy the requirement that "the net worth of each individual [surety] must equal or exceed the penal amount of the bond." FAR § 28.202-2(a) (FAC 84-42).

Since bid bond requirements are designed to secure the faithful execution of government contracts by placing the liability for procurement costs on the surety in the event that an awardee fails to honor its commitments, it is critical that an agency determine the enforceability of any such guarantee. The issue of surety acceptability is, moreover, a matter of bidder responsibility and contracting officers are vested with a great deal of discretion and business judgment in making such determinations. Surface Preparation and Coating Enters., Inc., B-235170, July 20, 1989, 89-2 CPD ¶ 69. Our office will normally defer to the contracting officer's judgment, unless a protester can establish either that there is no reasonable basis for the agency's decision or that it has been made in bad faith. Electrical Generation Technology, Inc., B-235809, Aug. 31, 1989, 89-2 CPD ¶ 204.

In the present case, it was reasonable for the contracting officer to reject Seaworks' individual sureties without discussion with Seaworks on the sureties, given the ongoing government investigation into these sureties' questionable business practices, which cast legitimate doubts on the integrity of the sureties and raised serious questions concerning their credibility. Surface Preparation and Coating Enters., Inc., B-235170, supra, at 4. While Seaworks and Bass have provided additional information in

their responses to the agency report to substantiate the value of Bass International stock, we are not persuaded that the Navy's rejection of the sureties constituted an abuse of discretion, given the prior experience of the Navy with these sureties.

The protest is denied.

James F. Hinchman
General Counsel